

Deferred Dreams and Deferred Democracy: A Benhabiban Analysis of Deferred Action
for Childhood Arrivals

by

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Introduction

In 2014, over 59.5 million people were displaced by war, conflict, persecution, or other human rights violations, not including internally displaced persons.¹ This number surpassed the previously recorded high point after the Second World War and thrust refugee and immigrant issues into the center of political discourse across Western democracies. Despite the fact that refugees and other displaced persons have always existed and have always presented political challenges for Western democracies especially, the enormous numbers in this year made it one of the top political and moral topics of debate. Antedating this new high point in the crisis of displaced persons by ten years, Seyla Benhabib sought to examine political membership through the lens of challenges posed by refugees and immigrants to Western democracies in her monograph *The Rights of Others* and in the Seeley Lectures, out of which the monograph arose. Drawing on the thought of Immanuel Kant, Hannah Arendt, John Rawls, and Jürgen Habermas, Benhabib seeks to explore the tension between the nation-state's claims to sovereignty and thus to determine who they admit² and an overarching human rights regime that declares basic human rights that include the right of exit and of care for the displaced.³ In true Critical Theorist fashion, Benhabib grounds her at times abstract theory in case studies of the *l'affair du foulard* in France and the 1990 German citizenship controversy in Schleswig-Holstein, in addition to some closing musings about the United States' exceptionalism on the question of refugee and immigrant citizenship.

¹ United Nations High Commissioner for Refugees. 2015. *Global Trends: Forced Displacement in 2014*. Geneva: UNHCR, 2.

² Here she draws on Carl Schmitt's concept of sovereignty in *The Concept of the Political* [1932] 2012.

³ Seyla Benhabib. 2004. *The Rights of Others*. Cambridge: Cambridge University Press, 2.

While the examples of Benhabib's case studies in France and Germany ground the theory and demonstrate that her story of frayed or "disaggregated" citizenship⁴ describes the European condition quite sufficiently, it is less clear how well her theory travels to the United States, as she seems to want it to in her closing chapter. She acknowledges the unique nature of US policy regarding refugees and immigration compared to other Western democracies. Surprisingly, she finds that the US "has remained remarkably unitary at the level of granting political rights" with its emphasis on naturalization as a precondition to political rights, despite its status as the largest immigrant nation in the world.⁵ Benhabib does not discuss in depth how her theory speaks to the US case broadly, or regarding specific cases, as she does with France and Germany. More specifically, Benhabib does not address the fact of various classes of semi-citizenship in the US, which are often racially determined and have important implications for the political and social composition of the US.

Citizenship differs depending on its context, especially as it relates to the way Benhabib applies her analytical framework in *The Rights of Others* (to Europe) and in considering its expansion to the US. While citizenship is a contested concept,⁶ this paper draws upon Benhabib's own development of citizenship through her engagement with Walzer. Benhabib differentiates between *cultural integration* and *political integration*, arguing that *political integration* "refers to those practices and rules, constitutional traditions and institutional habits, that bring individuals together to form a functioning

⁴ Benhabib, *Others*, 154-6.

⁵ Benhabib, *Other*, 214.

⁶ Dennis C. Mueller. 2002. "Defining Citizenship" *Theoretical Inquires in Law* 3(1); Benhabib, *Others*, 46-49, 114-122; Giorgio Agamben. 2008. "Beyond Human Rights" *Social Engineering* 15; Tomas Hammar. 1990. *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration*. Brookfield, Vt.: Gower.

political community.”⁷ Because the presence of refugees and immigrants in Western democracies and the question of their human rights centers on the functioning of the political community, citizenship shall be understood in this paper primarily in relation to the political community. According to Benhabib, a territorially delimited nation-state conceives of the citizen “first and foremost as the subject of *state-administration*, or more positively, as *the subject of rights and entitlements*.”⁸ Citizenship should thus be understood in terms of full and free membership in this political community, which implies particular rights and legal protections/status that enable one to continually reside within the territorial borders of a given state and participate in the processes that form legal and political decisions. Likewise, citizenship implies being subject to the policies and laws that develop from these legal and political decisions.

In this paper, I seek to apply Benhabib’s analytical framework to a particular strategy employed by the US government to balance the same tensions Benhabib enunciates—the sovereignty of nation-states to determine who can be admitted into political membership and the declarations of a human rights regime. Specifically, I will use four key investigative tools of Benhabib’s analytical framework—*hospitality*, *just membership*, *democratic self-governance*, and *democratic iterations*—to examine a particular strategy used to address questions of immigration in the United States. This strategy is the Deferred Action for Childhood Arrivals, or DACA, program developed during the Obama presidency as a way to temporarily suspend deportation for undocumented immigrants to the United States, who meet specific and strict qualifications. Due to the significant changes to DACA under the Trump administration,

⁷ Benhabib, *Others*, 121.

⁸ Seyla Benhabib. 2005. “Borders, Boundaries, and Citizenship” *PS: Political Science and Politics* 38(4): 673-677.

I will limit my analysis to the program as it was initially implemented and carried out only under the Obama presidency and up to Trump's announcements regarding the program in September 2017. In exploring DACA using Benhabib's analytical framework, I will be unable to capture some dimensions of the program and of US immigration policy more broadly, such as the issue of how identity and citizenship are conceptualized in the US context along racial-ethnic lines. Benhabib is of course aware of these issues, but does not address them in developing her framework because her focus is on Europe. Despite this challenge, the framework enables a thorough examination of DACA and its limitations as a strategy to address the sovereignty-human rights tension. Even where Benhabib's framework fails to capture dimensions of analysis in the American context, it informs and directs what adjustments need to be made.

In the following sections, I first justify selecting the four key investigative tools, which I use to analyze DACA, briefly review the Deferred Action for Childhood Arrivals program as a strategy and as an outgrowth of the DREAM Act, before analyzing DACA's fit with Benhabib's analytical framework regarding *hospitality, just membership, democratic self-governance*, and *democratic iterations* to demonstrate its failure to reach Benhabib's standards in any component tool. Finally, I conclude with closing thoughts about how well DACA balances state sovereignty with human rights claims of refugees and immigrants and how well Benhabib's analytical framework fits the American case.

Key Investigative Tools in Benhabib's Analytical Framework

Before moving into an overview of case selection and beginning the analysis of DACA's suitability as a strategy in the way that Benhabib outlines in *The Rights of*

Others, I explain my justification for selecting the key investigative tools of *hospitality*, *just membership*, *democratic self-governance*, and *democratic iterations*.

I choose *hospitality* because it is crucial to Benhabib's analytical framework in *The Rights of Others*. For Benhabib, *hospitality* must be more than the Kantian 'temporary sojourn' and instead bridges the gap to permanent resident by allowing longer stay and providing opportunities for entry into political membership.⁹ Not only does Benhabib devote an entire chapter (chapter one) to the exploration and explanation of *hospitality* as it relates to the question of state sovereignty and human rights regarding refugees and immigrants, but it also serves as the foundation from which she begins. While abstract and occurring in the "weak" publics of civil society and the media,¹⁰ *hospitality* is the basis from which Benhabib is able to begin addressing, through moral grounding, the relevance of a human rights regime for a sovereign democratic state.

Just membership is likewise important to Benhabib's project, but in quite a different way. While *hospitality* is more abstract and occurs mostly at the civil society level, *just membership* grounds Benhabib's theory in practical policy implications. *Just membership* addresses the inclusion of immigrants' and refugees' claims in "strong" public sphere¹¹ questions of admittance, porous borders, civil membership, and political rights and participation. In analyzing DACA as a strategy in the US, it is important to include key parts of Benhabib's theory that are grounded in policy questions and bring together the abstract with the practical and the "strong" public with the "weak" public, I therefore employ *just membership* as a tool in this analysis.

⁹ Benhabib, *Others*, 36 and 39.

¹⁰ *Ibid.*, 179.

¹¹ *Ibid.*, 179.

Democratic self-governance is a central piece of Benhabib's larger theoretical project on deliberative democracy and discourse ethics and is an important piece of almost any work she does. The *deliberative model of democracy* espoused by Benhabib is based in practical rationality and the principle that political decisions are open to appropriate public processes of deliberation by free and equal citizens.¹² *Democratic self-governance* is a part of this *deliberative model of democracy* and in this particular situation Benhabib explores how democracies integrate immigrants and refugees into their democracy with deliberative democracy in mind. Benhabib's focus in the use of *democratic self-governance* is to simplify the concept to the question of whether people in a democracy are both author of and subject to the law, that is, have they been able to participate in the political process of deliberation which created the law, to which they are subjected. Especially in the case of refugees and immigrants, individuals made vulnerable by their precarious legal status, the role of *democratic self-governance* cannot be avoided in understanding the challenges presented by displaced persons for sovereign democracies as well as the constant need to consider rights through the lens of democratic participation.

Finally, *democratic iteration* is one of the key conceptual innovations in *The Rights of Others*, which in that regard alone may warrant its inclusion. But, I include *democratic iterations* for a further, more important reason: the DACA program is a *democratic iteration* in that it is a contestation among a democratic people about the boundaries of and pathways to inclusion through increased political access, security, and rights. There are certainly other key parts of Benhabib's analytical framework in *The*

¹² Seyla Benhabib. 1996. "Toward a Deliberative Model of Democratic Legitimacy" in *Democracy and Difference: Contesting the Boundaries of the Political* ed. Seyla Benhabib Princeton: Princeton University Press, 69.

Rights of Others and in other works that may also be relevant to analyzing the case of DACA in the US, but *hospitality, just membership, democratic self-governance, and democratic iterations* are especially central to considerations of displaced persons and cover a broad range of thought, both abstract and practical, constructive and critical.

Deferred Action for Childhood Arrivals

On June 15, 2012, then-Department of Homeland Security Secretary Janet Napolitano announced the creation of a new executive branch policy called “Deferred Action for Childhood Arrivals.” This policy was not law, but rather “an act of prosecutorial discretion to defer enforcement action against ‘low-priority’ individuals.”¹³ This decision was an executive response to the failure of Congress to pass the DREAM Act, a law that would have granted a pathway to citizenship for some undocumented immigrants currently living in the United States. Due to this continued lack of legal pathways to citizenship for undocumented immigrants, the executive branch created DACA as a way to suspend deportation of undocumented immigrants brought to the US as children as well as to give them authorization to work. DACA does not, however, grant legal status or amnesty to its applicants, it merely defers deportation and is in this way a “dream deferred” for undocumented “Dreamers.”¹⁴

Aside from not providing any legal status or permanent stability, DACA also has a long list of guidelines, which limit the field of potential applicants. These guidelines include:

- (1) being under the age of 31 as of June 15, 2012 (the announcement of the program);
- (2) entering the US prior to one’s 16th birthday;
- (3) having “continuously resided in the United States since June 15, 2007;”

¹³ Christina A. Fiflis. 2013. “Deferred Action for Childhood Arrivals.” *GPSolo: Immigration* 30(5), 28.

¹⁴ Fiflis, “Deferred,” 30.

- (4) being present in the US as of June 15, 2012 and when making the deferred action request;
- (5) having no lawful status as of June 15, 2012;
- (6) currently in school or holding at least a high school diploma or GED or being an honorably discharged member of the Coast Guard or Armed Forces of the US; and
- (7) not having been “convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and [not posing] a threat to national security or public safety.”¹⁵

As the title suggests, the program is available for those undocumented immigrants who entered the US as children and as the guidelines suggest, these children have to be educated and/or veterans and law-abiding individuals as a precondition for consideration.

A year into the program, which was thought to immediately apply to some 900,000 people, more than half a million people had applied and 72 percent were granted DACA status.¹⁶ While the benefits of the DACA program have been widely praised as providing some security to vulnerable, especially legally vulnerable, individuals by providing work authorization and deferred deportation, the program also draws criticism for its shortcomings. In testing the program as a strategy to respond to the tension between state sovereignty and human rights declarations with four key investigative tools of Benhabib’s analytical framework, I am able to investigate primarily how the program fails to fulfill Benhabib’s proposed pathway forward, but I am also able to confirm the suitability of Benhabib’s framework for the American case with slight alterations.

¹⁵ US Citizenship and Immigration Services.

¹⁶ Audrey Singer and Nicole Prchal Svajlenka. 2013. “Immigration Facts: Deferred Action for Childhood Arrivals (DACA)” *Metropolitan Policy Program, Brookings*, 1.

DACA and the DREAM Act

First introduced in 2001 as the Development, Relief, and Education for Alien Minors Act, the DREAM Act arose out of a need to address a series of crucial economic/legal practical questions and moral-philosophical questions. Over the past 17 years, elected officials and their appointees have debated these questions at the “strong” public level, while journalists, scholars, citizens, noncitizens, religious institutions, community organizations, and schools have debated these questions at the “weak” public level. On the practical side, the question centers around the presence of an estimated 12 million undocumented individuals currently residing in the United States.¹⁷ Primarily the practical questions are: what do we do with the undocumented individuals already in the US? Should they have a pathway to citizenship or some legal status? Can they receive work authorization to work legally? These practical questions are about devising and implementing a legal and economic plan of action for the inclusion or exclusion of a large number of people in the cultural, economic, and political communities of the US, who currently do not hold legal or political rights in the US.

There are many tangential questions related to this situation related to US economic policies—foremost among them the creation and signing of the North American Free Trade Agreement (NAFTA) and the subsequent collapse of the Mexican economy—as well as foreign policies, such as US military interventions in Central America, which destabilized political regimes and economies. The focus of this paper is not to consider the origins of the phenomenon of immigration to the US, but these

¹⁷ Bryan Baker. 2014. “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2014.” *Department of Homeland Security, Office of Immigration Statistics*, 3.

questions of practical concern—what do we do with undocumented immigrants already currently in the US, going to school and working?—also connect, through these questions of past US policy and with considerations of US moral obligations through its commitment to a human rights regime, to moral-philosophical questions. These questions are: Who are we (the US)? What are our values? What do we owe to guests entering the US without documentation or authorization, morally and to follow international human rights norms? These questions deal with the ways that undocumented individuals and the creation of a program like DACA problematizes sovereignty and borders, and thus problematizes citizenship and pathways to it.

In addressing these questions, many engaged in the discussion have thrust the DREAM Act to the center of debate. While it has never passed the Senate or the House, it has come very close and the DACA program is in many ways a direct descendent of it, such that the spirit of the DREAM Act lives on in the much less robust DACA program. The DACA program was a compromise, never intended to be a long-term solution, but instead was a presidential response in the wake of yet another failure of the legislature to pass the DREAM Act. That being said, it inherits much of the language and intent of the DREAM Act, even if it lacks the thrust of a law and fails to provide a pathway to citizenship. The most recent DREAM Act, introduced in the Senate in July 2017 and cosponsored by Senators Lindsay Graham (R-SC) and Richard Durbin (D-IL) and House Representatives Lucille Roybal-Allard (D-CA) and Ileana Ros-Lehtinen (R-FL), creates a three-part pathway to citizenship for undocumented individuals. The first step offers Conditional Permanent Residence, if the applicant:

- (1) entered the United States under the age of 18;
- (2) entered four years prior to enactment and has since been continuously present;

(3) has not been convicted of a crime where the term of imprisonment was more than a year, or convicted of three or more offenses for which the aggregate sentence was 90 days or more (with an exception for offenses which are essential to a person's immigration status); and
(4) has been admitted to an institution of higher education, has graduated high school or obtained a GED, or is currently enrolled in secondary school or a program assisting students to obtain a diploma or GED.¹⁸

The second step is to grant Lawful Permanent Residence (and give a “green card”) to individuals who maintain Conditional Permanent Residence and fulfill conditions in one of three areas: Higher Education (must complete at least two years of higher education beyond high school); Military Service (must serve in the US military for at least two years and receive an honorable discharge); or Work (must prove consistent employment over three years).¹⁹ After five years with Lawful Permanent Residence status, individuals are eligible for Step Three: apply for US citizenship and naturalize.

While the DREAM Act differs from DACA in that it would have had the force of law and most significantly, it would have provided legal status and pathways to citizenship for undocumented individuals, it shares many similarities with DACA. Both are intended only for those undocumented individuals, who were under the age of 18 when they entered the United States, have followed laws and have no criminal record, and are educated, having at least graduated from high school or received a GED. Additionally, both include pathways to benefits or some relief from the fear of deportation through education or military service as a precondition for receiving any benefits. The similarities between DACA and the DREAM Act are also significant for the exploration of DACA through Benhabib's analytical framework. It is those parts of the

¹⁸ “The Dream Act, DACA, and Other Policies Designed to Protect Dreamers”, *American Immigration Council*, 09/06/2017.

¹⁹ “The Dream Act.”

DREAM Act, which DACA inherits—namely the requirements for “innocence” in crossing the border as a child and obeying US laws, acquiring education, and/or serving in the US military as preconditions to consideration for either deferred deportation in DACA or for legal status in the DREAM Act—that will be of primary importance in this analysis of DACA through Benhabib’s analytical framework using *hospitality*, *just membership*, *democratic self-governance*, and *democratic iterations* as investigative tools.

These investigative tools are important because if DACA proves to fulfill Benhabib’s standards, as measured by these investigative tools, we reach a normatively more desirable outcome: a more just, equal, and democratic state. If a society follows *hospitality*, *just membership*, *democratic self-governance*, and *democratic iterations* as Benhabib outlines them in her analytical framework, the state can be said to be moving towards a more deliberative democratic model of governance.

Hospitality

As Benhabib begins her exploration into the disaggregation of citizenship and the political challenge of refugees and immigrants, so shall I begin with a consideration of Kant’s conceptualization of *hospitality*. Benhabib draws upon Kant’s work in his 1795 essay, “Perpetual Peace,” and Kant’s definition of *hospitality* as “the right of a stranger not to be treated as an enemy when he arrives in the land of another.”²⁰ Kant goes on to distinguish the morally owed *Besuchsrecht* (“temporary right of sojourn”) from the special contractual privilege of *Gastrecht* (“right to be a permanent visitor”). This first one is an imperfect; that is conditional, moral duty placed upon states.²¹ Benhabib,

²⁰ Benhabib, *Others*, 26-7 and Immanuel Kant. [1795] 1922. “Perpetual Peace: A Philosophical Sketch.” Trans. by H. B. Nisbet. In *Kant: Political Writings*. Ed. By Hans Reiss. Cambridge.

²¹ Benhabib, *Others*, 36.

however, is more focused on the “unbridgeable gap he suggests exists between the rights to temporary sojourn and to permanent residency.”²² This is Benhabib’s focus because the first (considered a right) ensures a right to peaceful pursuit of life, while the second (considered a “contract of beneficence”) is what actually allows a refugee or immigrant political membership.²³ In considering the rights of displaced persons, Benhabib wants to move beyond a mere consideration of their survival and move towards an understanding of how and if states should legally incorporate refugees and immigrants into their polity by providing them political membership.

While she departs from Kant’s work here, it lays an important foundation for Benhabib as she explores *hospitality* as a concept and its implications for a world federation with cosmopolitan right that parallels with contemporary conceptualizations of human rights. Most important, this cosmopolitan right of temporary sojourn drives the conflict between assertions of state sovereignty with human rights commitments because it necessitates a creation of boundaries of civil community and of political membership. This is the paradox of democratic legitimacy: because democracies have to negotiate, the sovereign state binds itself to human rights norms, but in so doing creates “auxiliaries to the commonwealth” who are not (or at least not yet) included in the political community, despite their physical sojourn within the state’s territory.²⁴ According to Benhabib, this paradox can never be resolved for democracies, instead they must constantly renegotiate and reiterate both their commitment to human rights and

²² Benhabib, *Others*, 39.

²³ *Ibid.*, 39.

²⁴ *Ibid.*, *Others*, 47.

to sovereign self-determination,²⁵ which will be in part contestations over the boundaries of political and civil membership and who is “us” and who is “other.”

In bringing this particular part of Benhabib’s theory to the case of the United States, specifically to the case of DACA, many of *hospitality*’s implications hold, but there are some important distinctions to note. *Hospitality* fits well into Benhabib’s larger theoretical world of discourse ethics through its connections with a very basic reciprocal recognition. *Hospitality* is an attitude that requires individuals within a democracy to recognize the humanity of the “other” and listen to them. It is through listening that states may perform their sovereignty and determine threat to the nation—they are able to determine refugee and immigrant from enemy. But, Kant’s conception of *hospitality* falls short of the reciprocal recognition necessary for deliberative democracy—reciprocal recognition in the equal rights and recognition as members of the same democratic political community.

It warrants mentioning, if only briefly here, but to be discussed later, that the notion of *hospitality* in the United States is an interesting one due to the colonial and immigrant history of the country. The majority of the polity are European-descended individuals who invaded Native American lands; while the many minorities of the polity have different histories: some were brought here against their will as slaves, some have been co-opted or shut out by arbitrarily drawn and contested borders, while still others fled to the US for freedom from persecution, starvation, economic collapse, or war (sometimes instigated by US foreign policies). The US is truly a nation of immigrants as Benhabib notes.²⁶ And yet, the US also has a history of racial quotas, juridical

²⁵ Benhabib, *Others*, 47-8.

²⁶ *Ibid.*, 214.

genealogies, and restrictive immigration laws and practices that create classes of “impossible subjects.”²⁷ Further, US policymaking has functioned along two axes of immigration flows and immigration rights that complicate the situation further.²⁸ In Benhabib’s account, she does not detail the complex history of US immigration, but the complex history does not significantly alter Benhabib’s recommendations for US immigration and border policy. Benhabib’s theory accounts well for the two policy axes (flows and rights), despite her framework eventually conflating them into one theoretical issue. The number of immigrants allowed into a country and the rights that they are afforded are not the same policy question, and this is why she must depart from Kant and bridge the gap between *Besucshrecht* and *Gastrecht*. The question of admittance policies is primarily one of the first, morally-owed right to sojourn, the question of rights granted is primarily one of the second, specially-earned privilege to join the political community through permanent residence. This distinction is also the key distinction in the case of the DACA program.

Most central to Benhabib’s conceptualization of *hospitality* as a foundation for her framework is the extension of Kant’s *hospitality* for more than short stays for a more permanent residence and with this a pathway to enjoy political membership through reciprocal recognition as part of the deliberative democracy. DACA is a program that defers deportation and provides work authorization for undocumented individuals. While this is certainly more than a mere right to sojourn, it falls short of the type of *hospitality* Benhabib outlines. Because the program does not grant legal status, but is rather a reprioritization of prosecutorial action, the stay may be longer, but it is unstable

²⁷ Mae Ngai. 2014. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: Princeton University Press.

²⁸ Daniel Tichenor. 2002. *Dividing Lines: The Politics of Immigration Control*. Princeton: Princeton University Press..

and ambiguous. One DACA recipient, Luis Gomez, described the anxiety he faced in reapplying for DACA: “They’re saying it’s fine, but it might not be fine...it’s just another Tuesday for them, but for me, it’s like, am I going to lose everything?”²⁹ Another DACA recipient, Juan Pablo Orjuela, says that DACA “made a lot of things in my life easier, but having fear has never gone away.”³⁰ DACA recipients and their families receive no legitimate legal security to maintain residence in their home, failing to fulfill Benhabib’s conceptualization of *hospitality* in its demands for longer stays and a means to achieving permanent residence.

Also unstable and ambiguous is the political membership of DACA recipients, because they are unable to vote or run for or hold political office, but their greater security as DACA recipients empowers them to engage in the political sphere in informal ways. Erika Andiola, for example, began working as a congressional staffer in 2010, before working as a strategist for Bernie Sanders’ presidential campaign. While she was protected from deportation through DACA, her mother was ineligible and Immigration and Customs Enforcement raided her mother’s home, detaining and then deporting her mother and brother. “I was kind of ready to step a little bit away from the Dreamer movement and the organizing world,” Ms. Andiola says, “but my house got raided.”³¹ Because of her protections, however unstable they may have been, Ms. Andiola was empowered to work in the “strong” and “weak” publics in a way that may not have been possible without DACA. At the same time, Ms. Andiola’s own home was raided and her family members deported because of the program’s limitations, primarily in those who qualify.

²⁹ Maya Rhodan and Emma Talkoff. 2017. “We are Americans, Revisited: The Dreamers, Five Years Later.” *Time*.

³⁰ Rhodan and Talkoff, “Americans.”

³¹ *Ibid.*

Two further complications with DACA as a strategy to fulfill Benhabib's framework arise: the extraction of labor power and the high standards for qualification. The program's provision of suspended deportation and work authorization³² perpetuates a pattern of labor extraction without accompanying political rights the US has consistently employed against people of color. Because Benhabib deals primarily with European cases, she does not delve too deeply into this aspect of *hospitality* (a corrupt legally encoded *hospitality* for economic ends), aside from a brief overview of the world economy and the dynamics of push and pull factors in migration patterns, but it still fits within her framework. The DACA program awards work authorization so that undocumented individuals are legally able to work in the US, supporting the US economy through their labor and through their taxes, but they are unable to participate in the political community.

In this way, DACA is merely a new and slightly different version of the *bracero* program or the farm worker program in that it extracts labor without providing stability or a pathway to political membership. Beginning in the 1920s, the US-Mexico border hardened and farms in Texas transformed into commercial agricultural enterprises.³³ Due to the border closing, American commercial farms faced a farm laborer shortage. Additionally, Texas had a large number of undocumented immigrants. The solution to both of these situations was the creation of what Mae Ngai has called "imported colonialism."³⁴ This informal practice of businesses bringing in seasonal laborers from Mexico to extract their labor power, but not grant them any political rights or membership was later codified in the *bracero* program beginning in 1942 as a somewhat

³² Singer and Svajlenka, "Facts," 1.

³³ Ngai, *Impossible Subjects*, 131-2.

³⁴ Ngai, *Impossible Subjects*, 129.

forced agreement between the US and Mexico.³⁵ Similar to DACA, the *bracero* program codified and put an illusion of legal status around a practice of labor extraction that was already in existence and was seen as a solution to the presence of large numbers of undocumented immigrants in US territory. In fact, many Mexican laborers in this program were formerly undocumented workers, who gained some status as *braceros*.³⁶ *Braceros* were underpaid, treated poorly, and if they abandoned their contracts to work because of abuse or underpayment, were immediately considered “illegal aliens” and vulnerable to deportation.³⁷ The *bracero* program also mirrors DACA in its division of undocumented peoples into groups, as many *braceros* would attempt to bring their families to the US with them, only to have their families deported and their *bracero* status put in jeopardy.³⁸ This “comingling of status categories” made *braceros* and undocumented Mexican laborers especially vulnerable to the large American farmers and businesses in Texas, as was the case with the Carmona-Velasquez Family. A Texas farmer named Walter Wilson forced the Carmona- Velasquez family to bring other members of their family into the US illegally in order to work for him below the minimum wage guaranteed by the *bracero* program.³⁹ Unfortunately, this was not a rare case because the ambiguous status of *braceros* made them particularly vulnerable to this type of manipulation.

Like the *bracero* program, DACA divides by the creation of new status categories that are not equally accessed by all and imposes harsh punishments on those who do not qualify, often those in one’s family exposed to the state through DACA application. But

³⁵ Ngai, *Impossible Subjects*, 138.

³⁶ *Ibid.*, 141.

³⁷ *Ibid.*, 147.

³⁸ *Ibid.*, 150-152.

³⁹ *Ibid.*, 151.

most pressing is the fact that US immigration policy from 1942-2017 is still based primarily on the extraction of labor from Mexicans, with no consideration of inclusion in the political community. Laborers in the US who qualify for some status through the *bracero* program and through DACA have unstable protections, contingent upon their laboring for the US, following American laws, and contributing to the US economy, gaining neither a pathway to entering the political community nor political rights and stability. Of course, this codified contingency is rooted in racial-ethnic identity and discrimination based in conceptualization of the *cultural community*. Through DACA, the US continues its practice of “imported colonialism,” but now with even stricter qualification guidelines.

The second problem is that of its high standards of qualification for DACA protection. The program applies only to those who are educated and follow laws that they had no voice in creating, or those who served in the military to protect and defend a country, in which they are unable to vote or run for or hold elected office. Finally, the program is for those who arrived in the US as children, that is those who are considered “innocent” of any wrongdoing. As one Dreamer, Jong-Min, explains “For those who aged out or for those who don’t fit the specific narrow immigration requirements, there’s no pathway.”⁴⁰ The establishment of DACA has important practical benefits, but these high standards create a new class of semi-citizens and a new “model minority.” Both of these outcomes fall short of the *hospitality* Benhabib outlines in *The Rights of Others* because it puts preconditions on those eligible for sojourn (temporary or extended) and it racializes citizenship classes such that some groups of people (typically people of color) are held to a higher standard for fewer political rights in a community to which

⁴⁰ Rhodan and Talkoff, “Americans.”

they contribute economically, militarily, and socially. Further, the limited scope of the program—applying only to childhood arrivals—reinforces the centrality of US territorial boundaries in determining citizenship, and thus political access, which is a problem for the way Benhabib understands *just membership* and borders.

Just Membership and Porous Borders

A second key tool in Benhabib’s analytical framework in *The Rights of Others* is that of *just membership*, which ensures that those who receive *hospitality* then receive access to political membership and rights that go beyond mere sojourn and comply with a more balanced tension between state sovereignty and human rights. Benhabib’s cosmopolitan theory of justice goes beyond consideration of *just distribution* to include this *just membership*, again cohering with her theory of discourse ethics.⁴¹ According to Benhabib, *just membership* is,

recognizing the moral claim of refugees and asylees to *first admittance*; a regime of *porous* borders for immigrants; an injunction against denationalization and the loss of citizenship rights; and the vindication of the right of every human being ‘to have rights,’ that is, to be a *legal person*, entitled to certain inalienable rights, regardless of the status of their political membership.⁴²

This definition contains for component parts that relate to a few levels of analysis important in considering immigration policy. *Just membership* addresses (1) admittance for refugees and asylees as a moral right; (2) porous borders for immigrants; (3) the potential loss of citizenship rights or “denationalization;” and (4) an Arendtian-inspired right to have rights that specifies the right to have legal status with attached rights, regardless of political membership. In this conceptualization of a *just membership*, Benhabib raises the bar for democracies to address several policy arenas

⁴¹ Benhabib, *Others*, 3.

⁴² *Ibid.*, 3.

with laws and structures that ensure this extensive *just membership* as a way of satisfying the demands of human rights declarations and participate in the cosmopolitan world federation.

When it comes to applying *just membership* to the case of DACA, once again DACA fails as a sufficient strategy according to Benhabib's analytical framework, but it at the same time identifies that Benhabib's expectations have trouble fitting with the US context. Addressing the components of *just membership* in order, DACA typically does not consider the refugee or asylee status of applicants. This first component is primarily accomplished through the US's refugee resettlement program and its auxiliary programs such as the Cuban-Haitian Entrant Program, Special Immigrant Visa program, and the Asylum Program. If DACA recipients are attempting to receive asylee status, they are not likely to be applying for DACA and are ineligible for DACA if they already have asylee or refugee status (DACA Guideline 5).

The second component, however, is of central importance to the DACA program and the norms it reinforces. As noted above in considering *hospitality*, the DACA program provides deferred deportation for individuals who are seen as "innocent" in the act of crossing the US border and entering US territory without proper documentation or authorization. In the process of providing some status to individuals who did cross a border illegally, the DACA program at first seems to be a sign of loosening and making more porous the very tight borders the US patrols and reinforces with violence, physical barriers, and legal action (deportation). Instead, the DACA program reinforces these borders by providing legal reprieve only for those who are seen as "innocent" in transgressing the border and residing in US territory without documentation, without providing options for their family members who did so without the defense of being an

innocent child. Further, the program preserves the instability and volatile status of DACA recipients in that their deportation is not assuaged permanently through the provision of permanent residency or other legal protected status, rather it defers deportation, reminding recipients and all undocumented immigrants that their sojourn is limited and that borders are not porous at least on the entry side.

Additionally, the DACA program reaffirms the importance of US borders in its qualification guidelines. The guidelines make ineligible any individual who has not continuously resided in the US and were not located in the US at key points in time—the date of the announcement of the DACA program and the date of application (DACA Guidelines 3 and 4). These requirements ensure that individuals who may have crossed a US border in leaving and in re-entering the US are unable to receive DACA—a further effort to reinforce the importance of US territorial borders in the DACA program. The centrality of borders to the DACA qualification guidelines even draws borders within families as many DACA recipients have family members who do not qualify, but in the process of their family member applying for DACA are exposed to the state as undocumented individuals vulnerable to deportation. As one DACA recipient, Julio Salgado, explained when asked about the announcement of DACA: “it was a celebratory moment, but at the same time, there were people like my parents who did not qualify. It was just heartbreaking.”⁴³

Benhabib states that her model of democratic representation is “dependent upon access to, residency upon, and eventual membership within a circumscribed territory.”⁴⁴ Yet, the DACA program’s dependency on borders as a tool to divide strips the very

⁴³ Rhodan and Talkoff, “Americans.”

⁴⁴ Benhabib, *Others*, 218.

humanity from undocumented individuals, as Mr. Salgado goes on to say, “If you don’t qualify for a piece of paper, that means in the eyes of the public and the immigration system, you’re not human.”⁴⁵ Benhabib repeatedly affirms the necessity of borders for democratic nations, but she believes that these borders will and should become more porous. The DACA program if anything moves in the opposite direction by failing to increase legal access to US territory for those who need it most, failing to remove the contingency of residency in the territory of the US for those who are most vulnerable, and failing to provide eventual membership for those who contribute, follow laws, and yet are denied both rights and membership.

Moving on to the third component of injunctions against denationalization and of losing one’s citizenship rights, the DACA program again struggles to meet Benhabib’s standard. Because the program does not grant legal status, it does not grant citizenship rights in the way Benhabib may expect, but it does suspend deportation and grant authorization to work. In the process, this additional security may empower DACA recipients to engage politically in informal ways, but the loss of this security and of the few rights they have gained are constantly on the horizon. Additionally, by not granting status, DACA does not give national standing to its recipients, so denationalization is a bit more complicated. Many DACA applicants and recipients, however, most likely identify as “Americans” as this is their home, the national community whose laws they follow, whose society they enrich, and to whose economy they contribute. And yet the fragility of the program, evidenced in the Trump administration’s decision to let the program expire and thus end it, raises the question of if the government can now use the information they have on DACA recipients as a means to deport them. In this way, the

⁴⁵ Rhodan and Talkoff, “Americans.”

DACA program's instability may be a cause of denationalization, quite far from preventing it.

Finally, *just membership* calls for a 'right to have rights' and to have legal status with unalienable rights regardless of political membership. The DACA program certainly has many benefits, primarily economic, and has moved anywhere from 50,000 to 75,000 workers into the labor force, increased likelihood of holding a job among DACA recipients, and has benefitted the US economy, but it does not provide legal status.⁴⁶ Without a state, according to Arendt, one cannot have rights. While Benhabib challenges this theory, she likewise contests that immigration policies of a sovereign democracy should ensure *just membership*, which includes the provision of legal status and with that its accompanying 'right to have rights' regardless of their status. DACA fails in this regard.

Overall, DACA does not fulfill the requirements of *just membership* in any of its four constitutive components. Instead, the program reinforces the significance of hard borders, rather than porous ones; denies legal status and political rights to those who qualify for DACA benefits; and only stalls the instability of vulnerable individuals with the potential of empowering the government to take away what stability and rights they have gained through the brief tenure of this program. While *just membership* includes these four component parts, its consideration of borders is especially important in the case of the US and its DACA program. For Benhabib, "there is a crucial link between democratic self-governance and territorial representation."⁴⁷ This is partially why sovereign democracies need borders and why borders must be a part of any theory of

⁴⁶ Nolan G. Pope. 2006. "The Effects of DACAmentation: The impact of Deferred Action for Childhood Arrivals on Unauthorized Immigrants," *Journal of Public Economics* 143, 112.

⁴⁷ Benhabib, *Others*, 219.

human rights and state sovereignty on the topic of refugees and immigrants. The territorial borders in a democracy, however, then connect with the idea of political membership and the process of *democratic self-governance*. *Democratic self-governance* is necessary for democracy, and those within a sovereign's borders should have access to the performance of this democratic self-governance. Next, therefore, I consider the DACA program in terms of *democratic self-governance*.

Democratic Self-Governance

The conceptualization of *democratic self-governance* is by no means limited to Benhabib's work in *The Rights of Others*, nor is it limited to her work on immigration and human rights. Instead, *democratic self-governance* is a central piece of Benhabib's work on deliberative democracy and discourse ethics that carries an increased value in the consideration of refugees and immigrants in sovereign democracies. "Democratic rule," Benhabib argues, "means that all members of a sovereign body are to be respected as bearers of human rights...considered both author of the laws and subject to them."⁴⁸ This is "the core of democratic self-governance...that those who are subject to the law should also be its authors."⁴⁹ The civic and territorial boundaries drawn through self-legislation are also the process of self-constitution socially, politically, and territorially.⁵⁰ So through the process of participating in the creation and refinement of policies and laws, territorial and civic boundaries delimit the democratic sovereignty's polity, at least those who have full *just membership* and political rights.

Without *democratic self-governance*, the democratic legitimacy of a sovereign comes into question as well as its territorial claims. Because democracies pass and enact

⁴⁸ Benhabib, *Others*, 43.

⁴⁹ *Ibid.*, 217.

⁵⁰ *Ibid.*, 45.

laws and policies that bind those who legitimately authorize the enactment of such laws, “the scope of democratic legitimacy cannot extend beyond the *demos* which has circumscribed itself as a people upon a given territory.”⁵¹ Territorial boundaries are based in the limit of democratic representation and so the failure of a democracy to engender *democratic self-governance* has significant implications for its constitution, legislation, territory, and ultimately its democratic status.

The sketch of *democratic self-governance* so far excludes categories of individuals who do not enjoy full membership rights or political rights, but who reside in the territory and are subject to the “protection” of a state and its laws: “aliens,” “foreigners,” immigrants, refugees. Kant identifies this class as “auxiliaries to the commonwealth,” those classes of people that are historically excluded from “the project of citizenship” and yet are subject to the sovereign’s law.⁵² The auxiliaries have traditionally been women and children, minorities, or “foreigners” of various sorts. The US has long had auxiliaries: African Americans; women; Chinese, Japanese, and Filipino immigrants; Latinx immigrants; refugees; poor whites. But the introduction of the DACA program as a strategy to address the competing claims of sovereignty and human rights on the US necessitates a look into the status of US *democratic self-governance*.

On this point, the question is whether or not the Deferred Action for Childhood Arrivals program creates or preserves a pathway to self-governance through deliberative democracy. DACA recipients by definition must be within the territory of the United States and must have followed its laws (DACA Guidelines 3, 4, and 7 from above). This

⁵¹ Benhabib, *Other*, 219.

⁵² Benhabib, *Others*, 46 and Kant, “Perpetual Peace,” 121.

would mean that DACA targets individuals who live within US borders, follow US laws, may have even defended the US in the military (DACA Guideline 6), and yet have no lawful status (DACA Guideline 5); that is, they are, in Kant's terms, auxiliaries to the US polity. Because DACA not only does not provide legal status or political rights, but also does not provide a pathway towards the acquisition of such membership and rights, the program fails to meet Benhabib's test of *democratic self-governance*. As Mae Ngai points out, undocumented immigrants are "impossible subjects" for the US because they reveal the paradoxes of US law and social orders.⁵³ Using Benhabib's system has so far demonstrated that DACA does not resolve this paradox and that it also divides undocumented communities internally and externally through its creation of a model minority that distinguishes "good" and "bad" undocumented immigrants.⁵⁴ While many "DACAdmented" individuals are empowered by the positive proscriptive identity of "good" immigrant and the slight security of protection from deportation ensured through DACA to engage in activism of various sorts, the official and formal pathways of political participation such as voting and running for and holding elected office are completely closed to DACA recipients. In this way, DACA is an example of both deferred dreams as well as deferred democracy.

Instead of representing their own interests, DACA's failure to create pathways for self-governance for undocumented immigrants perpetuates a system in which undocumented immigrants either risk deportation through public activism or trust allies to speak their interests for them in the political sphere. But these informal avenues

⁵³ Ngai, *Impossible* and Tania A. Unzueta Carrasco and Hinda Seif. 2014. "Disrupting the dream: Undocumented youth reframe citizenship and deportability through anti-deportation activism" *Latino Studies* 12(2), 282.

⁵⁴ Carrasco and Seif, "Disrupting," 286.

to political action only demonstrate the formidable barrier to political rights for undocumented immigrants and that DACA fails to seek *democratic self-governance*. Further, DACA's guidelines require subjection to a law one did not authorize prior to and after granting DACA and further divides an auxiliary group by attaching moral significance to undocumented status—childhood arrivals as innocent victims and adult arrivals as dangerous and criminal enemies. DACA, in its current form, but also as a derivative of and stand-in policy for the DREAM Act, represents the struggle in at least US democracy of determining civic and political boundaries of inclusion and the multiple strategies attempted to appropriately and justly respond to claims of sovereignty over its territory and of human rights for those who come to and through sovereign borders.

Democratic Iterations

The final key investigative tool of Benhabib's theoretical construction in *The Rights of Others* that I use to assess the Deferred Action for Childhood Arrivals Program is the concept of *democratic iterations*. Benhabib defines *democratic iterations* as the

complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned, throughout legal and political institutions, as well as in the associations of civil society...in the 'strong' public bodies of legislatures, the judiciary, and the executive, as well as in the informal and 'weak' publics of civil society associations and the media.⁵⁵

These *democratic iterations* occur at multiple levels and allow for open-ended contestation of citizenship and the various questions surrounding it. A sub-process of *democratic iterations* is *jurisgenerative politics*, which are iterative acts performed by a democratic people bound together by particular norms that reinterprets these norms

⁵⁵ Benhabib, *Others*, 179.

and is then both subject to and author of the laws created through the legal process.⁵⁶ In this way *democratic iterations*, through *jurisgenerative politics*, is deeply connected with *democratic self-governance*. It is through *democratic self-governance* that *democratic iterations* manifest themselves as contestations over the norms and practices, laws and policies as well as questions of rights claims that constitute the civic and political nature of the democratic polity. Specifically, *democratic iterations* focus on the repetition and reinterpretation of universal rights and identities. Borrowing from Derrida the concept of iteration, Benhabib is able to inject necessary dynamism into the conceptualization of citizenship in democracies.⁵⁷

Turning to a consideration of DACA as a *democratic iteration*, the dynamism of iterability and the role of contestation move to the center of discussion. Discussion of citizenship and representation are always about exclusion on some level because a democracy can only ensure democratic self-governance to a limited territory with defined borders. Because the discussion of inclusion (the discussion of citizenship) is always about exclusion (the auxiliaries to the polity), *democratic iterations* are also often about the rights owed to those who are in and those who are out. The process of *democratic iterations*, as Benhabib describes them, assumes not just repetition, but also alteration.⁵⁸ DACA is an example of such an iteration that deals with core questions of rights claims and the norms and principles that constitute the polity of a sovereign polity through a slight policy alteration.

In this particular case, the contestation over the inclusion or exclusion of undocumented immigrants in or from the *demos* led to a stalemate in Congress that

⁵⁶ Benhabib, *Others*, 181.

⁵⁷ Lasse Thomasson. 2011. "The Politics of Iterability: Benhabib, the Hijab, and Democratic Iterations," *Polity* 43(1), 129.

⁵⁸ Thomasson, "Iterability," 130.

necessitated an executive directive on prosecutorial discretion. This directive seeks to strike a balance and maintain space for contestation over “DACAdmented” individuals as included or excluded and over their claims to certain human rights protections. As an iteration, the DACA program creates a new class of semi-(or perhaps pseudo-) citizens that are treated differently in both the “strong” and “weak” publics through their construction as a model minority. *Democratic iterations* focus on the identity of the polity and in this creation of a new model minority there is evidence of the open contestation of identity.

This contestation is not, however, an example of a particularly democratic approach to identity forming processes in the case of DACA, as can be seen in the previous sections of this paper. Each iteration is not only a contestation and reinterpretation of identity or of rights; it is almost always both together, as it is even in the examples Benhabib offers.⁵⁹ In the case of DACA, then, the consideration of undocumented immigrants’ place inside or outside of the American democratic polity is about identity as well as rights. In Benhabib’s rendering, *democratic iterations* are processes that create new systems for learning. In the example of the *l’affaire du foulard*, Benhabib explains how both French society and Muslim girls must learn from each other as the *democratic iteration* mitigates the clash of universalism and particularism.⁶⁰ It is unclear, however, how this learning process is a function of *democratic iterations* rather than a coincidence in this particular situation. If the two parties meant to engage in mutual learning processes both already have legal status, then it would seem to be a function of the iteration that both must learn from each other

⁵⁹ Thomasson, “Iterability,” 133.

⁶⁰ Benhabib, *Others*, 191-193 and Thomasson, “Iterability,” 134.

on these questions of rights and identity. If, on the other hand, the parties are not on equal legal status footing and in fact the right in question is whether or not to include one of the parties or not, it is unclear how mutual learning processes occur at all. There is no mechanism or incentive for the included to learn from the excluded contained within Benhabib's *democratic iterations*.

In Europe, with its multiple levels of citizenship, *democratic iterations* function well in contesting universal rights and particular identities along with the larger identity of the polity, but the concept in the American case is less successful. In European states, immigrants have access to city and/or regional citizenship, then national citizenship, and finally the most abstract, European citizenship through the EU. The US's lack of a similar structure makes it difficult to use a framework intended to explain European citizenship contestation to explain such contestations in the US. In the US, notably, the federal government took away its states' abilities to offer citizenship or political rights to individuals residing within the state's borders and limits the types of laws state can pass aiding or protecting immigrants, documented or otherwise. So in the US case, in particular, the contestations over universal rights and particular and polity identities often exclude the very subject of the new iteration and cut off opportunities to learn from this subject. In the case of DACA, deferred deportation and work authorization enable iterations in the "weak" publics of civil society, but undocumented individuals remain excluded from "strong" publics that determine legal institutions, which in turn determine political and legal membership and exclusion. In this way, the semi-inclusion of "good" and "innocent" undocumented immigrants who meet DACA guidelines may only hinder the learning processes contained within *democratic iterations*, causing some iterations to be less than democratic.

Conclusion

Seyla Benhabib creates an important analytical framework for understanding contemporary tensions between sovereignty and human rights adherence among democracies that addresses the changing categories of citizenship and membership. Through Benhabib's own case studies, one finds evidence that the system matches well with the European case and its current debates. In this paper, I have attempted to bring this system to a consideration and test of the Deferred Action for Childhood Arrivals program in the United States. In identifying key components of Benhabib's analytical framework to use as investigative tools, I test DACA as a successful strategy for balancing each side of this tension. In this examination, DACA largely reinforces claims to state sovereignty at the expense of adherence to a cosmopolitan human rights regime and defers democracy.

While DACA largely fails to fulfill the type of strategy Benhabib outlines in *The Rights of Others*, it also reveals the limitations of Benhabib's system outside the context of the EU and its disaggregated citizenship hierarchy noted above. While DACA is an imperfect policy, the debate over even this minimal a program ignited and continues to fuel fierce debates about its implementation. Perhaps, Benhabib's standards are just too high for any sort of policy to fulfill the principles of her theory in the American context, where there are no levels of citizenship in the way there are in the Netherlands, for example. Additionally, the US has a unique history of racialized citizenship, which creates a distinct practical and philosophical space in which to disentangle concepts of race, ethnicity, national identity, and citizenship. As Ngai explains, the US's history of colonialism and conquest (i.e. dislocating Native Americans, kidnapping and enslaving Africans, the changing border with Mexico, creating Filipino "Nationals"), its numerous

immigration restrictions and quotas based on racial-ethnic identity (i.e. Chinese Exclusion acts), Japanese internment camps in World War II, and work extraction programs like the *bracero* program leads to a complicated conceptualization of belonging on any level.⁶¹

While many Western democracies have histories of exclusion, the US's history is particularly long, varied, and recent. Because of this, the number of individuals brought to the US or who come to the US is quite large and they come from a wide range of contexts for a wide range of reasons. Benhabib's purpose was not to explain the American case, but her analytical framework is still useful in testing American strategies, even if the bar is set too high. Philosophically, Benhabib's framework stands, but practically, the US case presents a more complex situation that necessitates a revised version of Benhabib's analytical framework and accompanying tools that take race-ethnicity into account and its connections not just with *cultural* inclusion, but also with *political* inclusion and rights.

Additionally, it may be the case that in moving from the theoretical and abstract to the practical implementation of a strategy of this sort, the unique history of the United States with regards to immigration necessitates additional or different standards of application. While it is not the project of this paper to identify such standards, the performance of DACA analyzed above may hold insights into what these may be. In reviewing DACA's performance in the above analysis, it is likely that DACA would and should still fail in this altered American exceptionalism system, but its failure highlights the enduring relevance of immigration and refugee/asylee policies in US politics. One such direction of inquiry for an altered system for the US may be in the moral grounding

⁶¹ Ngai, *Impossible Subjects*.

of *hospitality* as a foundation for rights and some safeguard preventing the moralizing of displaced individuals in ways that create model minorities and perpetuate systems of undemocratic exclusion, as does the DACA program.

Ultimately, Benhabib's theory allows for a renewed consideration of questions of inclusion, rights, and membership nearly 15 years after its publication. By attempting to balance cosmopolitan claims with state sovereignty claims, Benhabib walks a middle road bound to disappoint those on either end of this spectrum. And yet, the power of this theory holds great potential for guiding contemporary discussions and decisions over the rights granted to displaced persons and the categories of citizenship created around the world. The current debates over DACA in the courts, the executive branch, the Congress, the media, and in civil society make such questions fundamental to assessing the democratic nature of a sovereign state and indicate the significance of human rights declarations, even and maybe especially for the United States.

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